

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH
BENEFITS FUND; PIRELLI ARMSTRONG
RETIREE MEDICAL BENEFITS TRUST;
TEAMSTERS HEALTH & WELFARE FUND OF
PHILADELPHIA AND VICINITY;
PHILADELPHIA FEDERATION OF TEACHERS
HEALTH AND WELFARE FUND; DISTRICT
COUNCIL 37, AFSCME - HEALTH &
SECURITY PLAN; JUNE SWAN; BERNARD
GORTER; SHELLY CAMPBELL and
CONSTANCE JORDAN,

Plaintiffs,

v.

FIRST DATABANK, INC., a Missouri corporation,
and McKESSON CORPORATION, a Delaware
corporation,

Defendants.

Civil Action: 1:05-CV-11148-PBS

Judge Patti B. Saris

**DEFENDANT MCKESSON CORPORATION'S MOTION FOR LEAVE
TO FILE UNDER SEAL**

McKesson respectfully moves this Court for leave to file the following submissions under seal (with redacted versions filed in the public record): (a) McKesson Corporation's Response to the Court's Inquiries at the November 13, 2007 Hearing On Class Certification Issues; (b) Declaration of Lori Schechter in Support of that Response, and Exhibits 1, 2, 5, 6 and 7 thereto; and (c) the November 28, 2007 Expert Declaration of Robert D. Willig. Among the material at issue in this motion are documents that were previously ordered sealed by this Court, documents designated "Confidential" or "Highly Confidential" by the producing third parties, and

documents reflecting confidential claims data of TPPs. McKesson submits this motion in accordance with its obligations under the protective order governing this case.

In support of this motion, McKesson states as follows:

Confidential Third Party Information

1. Third parties to these proceedings have produced confidential information in the documents described below. Such confidential information of third parties is entitled to heightened protection. *See Rossbach v. Rundle*, 128 F. Supp. 2d 1348, 1352 (S.D. Fla. 2000) (“When the sensitive information pertains to non-parties who are not public figures, the balancing of interests in favor of protecting the privacy of the non-parties and against uninhibited access to the records is strengthened.”); *see also United States v. Snyder*, 187 F. Supp. 2d 52, 63 (N.D.N.Y. 2002) (“The privacy interests of innocent third parties . . . should weigh heavily in a court’s balancing equation.”) (citation omitted). McKesson therefore seeks leave to file the following third party documents under seal:

2. Exhibits 1 and 2 to the Schechter Declaration are pages excerpted from the depositions of Rule 30(b)(6) witnesses for Caremark, a third-party PBM. These depositions were designated “Confidential” and “Highly Confidential” by Caremark.

3. Exhibit 5 to the Schechter Declaration is a contract amendment between Express Scripts, Inc., and Blue Cross Blue Shield of Massachusetts. It was marked “Highly Confidential – Attorney’s Eyes Only” by third party Express Scripts and describes the confidential terms of the reimbursement contract between the two parties.

4. Exhibit 6 to the Schechter Declaration is Medco Health Solution Inc.’s (“Medco”) response to a Request for Proposals issued by United Food and Commercial Workers Union (“UFCW”). It was marked “Highly Confidential” by third party Medco and contains confidential information describing the terms under which Medco proposed to administer UFCW’s prescription drug benefits.

5. Exhibit 7 to the Schechter Declaration contains excerpts from the Declaration of Raymond S. Hartman in Support of Plaintiffs Motion for Class Certification, filed September 3,

2004 in the MDL. By electronic order dated September 15, 2004, this declaration was sealed by Judge Marianne B. Bowler in the MDL.

The November 28, 2007 Expert Declaration of Robert D. Willig

6. The appendices to the November 28, 2007 Expert Declaration of Robert D. Willig disclose detailed reimbursement prices paid by five TPPs, including two third-party TPPs. Such detailed claims data is considered highly confidential by those parties. McKesson therefore seeks leave to publicly file a version of Dr. Willig's declaration that redacts only the confidential information contained in the declaration, and to file an unredacted version of this declaration under seal.

McKesson's Response to the Court's Inquiries at the November 13, 2007 Hearing

7. McKesson Corporation's Response to the Court's Inquiries at the November 13, 2007 Hearing On Class Certification Issues discusses the third-party documents or deposition testimony described above. McKesson therefore seeks leave to publicly file a version of this brief that redacts the confidential information of third parties, and to file an unredacted version of this submission under seal.

8. Paragraph 14 of the Protective Order mandates that any document or pleading containing the type of confidential material referenced above be filed under seal. McKesson hereby seeks to comply with the terms of the Protective Order in this action.

WHEREFORE, McKesson respectfully requests that this Court grant it leave to file under seal (a) McKesson Corporation's Response to the Court's Inquiries at the November 13, 2007 Hearing On Class Certification Issues; (b) Declaration of Lori Schechter in Support of that Response, and Exhibits 1, 2, 5, 6, and 7 thereto; and (c) the November 28, 2007 Expert Declaration of Robert D. Willig. McKesson has filed in the public record redacted copies of these submissions, which excise only the confidential information contained therein.

Respectfully submitted,

McKesson Corporation
By its attorneys:

/s/ Lori A. Schechter
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Dated: November 28, 2007

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party through the Court's electronic filing service on November 28, 2007.

/s/ Lori A. Schechter
Lori A. Schechter

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**[PROPOSED] ORDER GRANTING MCKESSON CORPORATION'S
MOTION FOR LEAVE TO FILE UNDER SEAL**

McKesson Corporation seeks leave to file under seal documents filed in connection with its Response to the Court's Inquiries at the November 13, 2007 Hearing On Class Certification Issues. These documents contain information produced by other parties that is confidential to those parties. McKesson has publicly filed redacted copies that excise only the confidential information of these other parties. The Court, having considered all documents in support and opposition hereto, hereby GRANTS McKesson's Motion for Leave to File Under Seal the following documents:

1. McKesson Corporation's Response to the Court's Inquiries at the November 13, 2007 Hearing On Class Certification Issues;
2. Declaration of Lori Schechter in Support of that Response, and Exhibits 1, 2, 5, 6, and 7 thereto; and
3. The November 28, 2007 Expert Declaration of Robert D. Willig.

IT IS SO ORDERED.

DATED: _____

Hon. Patti B. Saris
United States District Court Judge